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### Title 40 Chapter 01-03: Mines and Mining to Weighing Coal - 1970

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## TITLE 40

### MINES AND MINING

- Chapter 1. Mining Claims, 40-1-1 to 40-1-13.
2. Coal Mines, 40-2-1 to 40-2-17.
  3. Weighing Coal at Mines, 40-3-1 to 40-3-6.
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### CHAPTER 1

#### MINING CLAIMS

- Section 40-1-1. Lode claims—Size and shape—Discovery necessary.
- 40-1-2. Discovery monument—Notice of location—Contents.
- 40-1-3. Boundaries to be marked.
- 40-1-4. Copy of location notice to be recorded.
- 40-1-5. Assessment work on group claims.
- 40-1-6. Affidavit of work done.
- 40-1-7. District recorders—Office abolished.
- 40-1-8. Vacancy and removal—County recorder to receive records.
- 40-1-9. County recorder may certify district records.
- 40-1-10. Certified copies of records evidence.
- 40-1-11. Interfering with notices, stakes or monuments—Penalty.
- 40-1-12. Trespassing on claims—Removing ores—Penalty.
- 40-1-13. Prospecting permits—Term—Conditions.

**40-1-1. Lode claims—Size and shape—Discovery necessary.**—A lode mining claim, whether located by one or more persons, may equal, but shall not exceed, 1,500 feet in length along the vein or lode and may extend 300 feet on each side of the middle of the vein at the surface, except where adverse rights render a lesser width necessary. The end lines of each claim must be parallel. No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located.

**History:** R. S. 1898, § 1495; L. 1899, ch. 14, § 1; C. L. 1907, § 1495; C. L. 1917, § 3890; R. S. 1933 & C. 1943, 55-1-1.

#### Cross-References.

Actions to quiet title, see notes to 78-40-1 et seq.

Changing ore samples and assay reports an offense, 76-20-14.

Partition of claims, 78-39-12, 78-39-13.

Proof of custom in actions on mining claims, 78-40-10.

Records of assayers, samplers and dealers, 76-20-15.

Right of entry pending action for purposes of action, 78-40-6.

Salting mines, criminal liability, 76-20-13.

Temporary injunction in actions involving mining claims, 78-40-11.

Trespass on mining claim, limitation of actions, 78-12-26.

#### 1. Words and phrases defined.

"Veins or lodes" are lines or aggregations of metal imbedded in quartz or other rock in place, consisting of a strip of mineral-bearing rock within defined bound-

aries in the general mass of the mountain, which must be continuous and without interruption, bounded by country rock mineralized to no greater extent than the general condition of the vicinity. *Grand Central Min. Co. v. Mammoth Min. Co.*, 29 U. 490, 83 P. 648, dismissed for want of jurisdiction, 213 U. S. 72, 53 L. Ed. 702, 29 S. Ct. 413.

Rock or matter of any kind, in order to constitute a "vein or lode," must be metaliferous and contain such mineral value as will distinguish it from the country rock, especially where no well-defined walls appear. *Grand Central Min. Co. v. Mammoth Min. Co.*, 29 U. 490, 83 P. 648, dismissed for want of jurisdiction, 213 U. S. 72, 53 L. Ed. 702, 29 S. Ct. 413.

The term "mines" is not confined to subterranean excavations or workings, nor is the term "minerals" confined to metaliferous ores. *Nephi Plaster & Mfg. Co. v. Juab County*, 33 U. 114, 93 P. 53, 14 L. R. A. (N. S.) 1043.

Gypsum is mineral, and constitutes mineral deposit under mineral laws. *Nephi Plaster & Mfg. Co. v. Juab County*, 33 U. 114, 93 P. 53, 14 L. R. A. (N. S.) 1043.

## 2. Discovery.

The question of whether there is a discovery of minerals sufficient to meet statutory requirements is one of fact and it is essential only that the discovery be of such significance that a practical, experienced miner would deem it advisable to pursue the vein or "lead." *Rummell v. Bailey*, 7 U. (2d) 137, 320 P. 2d 653.

The point of discovery must be located upon open public land and when the discovery point is located on private patented land the claim is void and not amendable. *Cram v. Church*, 9 U. (2d) 169, 340 P. 2d 1116.

## 3. Location and filing of claim.

One locating and filing as lode mining claim land suitable only for placer mining of limestone building rock cannot after more than twenty years' actual possession and working of claim, involving considerable expenditure of money and improvement of property for quarrying purposes, be deprived of possession by one who surreptitiously locates and files placer mining claim covering land, particularly in view of federal statute entitling claimant to patent after possession and working of claim for period of limitation provided by state law. *Springer v. Southern Pac. Co.* 67 U. 590, 248 P. 819.

## 4. Mining patent.

Attorney who bought mining patent of bankrupt mining company, a former client at trustee's sale and paid all creditors of bankrupt in full except one, whose claim, however, was fully discharged, did not hold patent as trustee for latter creditor. *Lee v. Nelson*, 68 U. 575, 251 P. 371.

## Collateral References.

Mines and Minerals  $\Rightarrow$  18.

58 C.J.S. Mines and Minerals § 44.

Lode claims, 36 Am. Jur. 337, Mines and Minerals § 84.

Breach of obligation to drill exploratory oil or gas wells, right and measure of recovery for, 4 A. L. R. 3d 284.

"Discovery," under mining laws, of radio-active minerals such as uranium, 6 A. L. R. 2d 560.

Lode or vein, what is "top" or "apex" of, 1 A. L. R. 418.

**40-1-2. Discovery monument—Notice of location—Contents.**—The locator at the time of making the discovery of such vein or lode must erect a monument at the place of discovery, and post thereon his notice of location which shall contain:

- (1) The name of the claim.
- (2) The name of the locator or locators.
- (3) The date of the location.
- (4) If a lode claim, the number of linear feet claimed in length along the course of the vein each way from the point of discovery, with the width claimed on each side of the center of the vein, and the general course of the vein or lode as near as may be, and such a description of the claim, located by reference to some natural object or permanent monument, as will identify the claim.

- (5) If a placer or mill site claim, the number of acres or superficial feet claimed, and such a description of the claim or mill site, located by

reference to some natural object or permanent monument, as will identify the claim or mill site.

**History:** R. S. 1898, § 1496; L. 1899, ch. 14, § 2; C. L. 1907, § 1496; C. L. 1917, § 3891; R. S. 1933 & C. 1943, 55-1-2.

#### 1. Requisites of location of placer claim.

Requisites of valid location of placer claim are: (1) discovery of mineral within the claim; (2) the marking of the location on the ground so that its boundaries may be readily traced. *Gibbons v. Frazier*, 68 U. 182, 249 P. 472.

#### 2. Location notice.

A notice of location which describes the ground in such a way as to be incapable of identification is insufficient. *Darger v. Le Sieur*, 9 U. 192, 33 P. 701, affirming 8 U. 160, 30 P. 363, and applying 2 Comp. Laws 1888, § 3241.

In action to determine right of possession to certain conflict areas arising out of locations of mineral lands, wherein it appeared that defendant's location notice posted and filed of record failed to describe land intended to be claimed, and no amended location notice was filed until after plaintiffs had located land, it was held that plaintiffs had met requirements of both federal and state statutes relative to claim and were entitled to conflict areas. *Miehlich v. Tintie Standard Min. Co.*, 60 U. 569, 211 P. 686.

Priority of location cannot be maintained by amendment if in fact the amendment amounts to a new and different location. However, neither niceties of description in original notices of location nor more than reasonable accuracy in the staking of claims is required to effectuate a valid location. Prospectors are not engineers nor does the law expect them to be. However, the law does require sufficient detail and accuracy in the notice as recorded to allow location of the claim upon reasonable effort. *Cranford v. Gibbs*, 123 U. 447, 260 P. 2d 870.

Plaintiff's placer claim notices definitely singled out a particular area with the aid of estimated distances and with reference to natural features, and defendants could not rely upon technical deficiencies to de-

feat the claim. *Fuller v. Mountain Sculpture*, 6 U. (2d) 383, 314 P. 2d 840.

#### 3. Determination of location and strike.

In determining the location and strike of a vein, the geological features of the adjacent country, so far as in evidence, will be considered by the court. *Grand Central Min. Co. v. Mammoth Min. Co.*, 29 U. 490, 83 P. 648, dismissed for want of jurisdiction in 213 U. S. 72, 53 L. Ed. 702, 29 S. Ct. 413.

#### 4. What constitutes valid location.

Proper staking or marking of mining claim completed valid location of ground, and thereafter it was not incumbent on claimant, as matter of law, to preserve standing of stakes against meddlesome persons or trespassers in order to preserve its rights as against subsequent locator seeking to acquire mining rights in premises. *Miehlich v. Tintie Standard Min. Co.*, 60 U. 569, 211 P. 686.

#### 5. Conflicting claims of land and mineral patentee.

Mineral patent is conclusive (as against collateral attack) of valid location of claim prior to its issuance, but not as to particular date of location; and in order to have mineral patent relate back to date of location where land patent (nonmineral) was issued to another prior to issuance of mineral patent, latter patentee must prove valid location prior to date of nonmineral patent. *Gibbons v. Frazier*, 68 U. 182, 249 P. 472.

Land patent (nonmineral) issued years prior to mineral patent is superior thereto even though attempted location was made prior to issuance of nonmineral patent, where location was insufficient and invalid because of lack of proof of discovery of mineral and bounding of claim. *Gibbons v. Frazier*, 68 U. 182, 249 P. 472.

#### Collateral References.

Mines and Minerals § 17(1).

58 C.J.S. Mines and Minerals § 42.

Discovery, 36 Am. Jur. 336 et seq., Mines and Minerals § 83 et seq.

**40-1-3. Boundaries to be marked.**—Mining claims and mill sites must be distinctly marked on the ground so that the boundaries thereof can be readily traced.

**History:** R. S. 1898, § 1497; L. 1899, ch. 14, § 3; C. L. 1907, § 1497; C. L. 1917, § 3892; R. S. 1933 & C. 1943, 55-1-3.

#### Cross-Reference.

Plats and subdivisions generally, 57-5-1 et seq.

**1. Courses and distances.**

The courses and distances in field notes, and in patent of mining claim, were not conclusive of question of true location of established monuments of official survey. *Grand Central Min. Co. v. Mammoth Min. Co.*, 36 U. 364, 104 P. 573, Ann. Cas. 1912A, 254.

**2. Effect of noncompliance.**

Possession was no factor in suit to quiet title to mining claims where plaintiffs' claims were never legally located. *Allen v. Radium King Mines, Inc.*, 11 U. (2d) 28, 354 P. 2d 578.

**Collateral References.**

Mines and Minerals—20(1).  
58 C.J.S. Mines and Minerals § 48.

**40-1.4. Copy of location notice to be recorded.**—Within thirty days after the date of posting the location notice upon the claim the locator or locators, or his or their assigns, must file for record in the office of the county recorder of the county in which such claim is situated a substantial copy of such notice of location. Such notice of location shall not be abstracted unless a subsequent conveyance affecting the same property is filed for record, whereupon it shall be abstracted.

**History:** R. S. 1898, § 1498; L. 1899, ch. 14, § 4; C. L. 1907, § 1498; L. 1909, ch. 56, § 1; C. L. 1917, § 3893; R. S. 1933 & C. 1943, 55-1-4.

**1. Failure to record.**

A locator's title to a claim which was properly initiated under the mining laws was not forfeited by a failure to record. *Atherley v. Bullion Monarch Uranium Co.*, 8 U. (2d) 362, 335 P. 2d 71.

**2. Actual notice.**

Actual notice of an amended claim and another's exclusive possession is equivalent to valid record notice. *Atherley v. Bullion Monarch Uranium Co.*, 8 U. (2d) 362, 335 P. 2d 71.

**Collateral References.**

Mines and Minerals—22.  
58 C.J.S. Mines and Minerals § 56.  
Record of location, 36 Am. Jur. 346 et seq., Mines and Minerals § 95 et seq.

**40-1.5. Assessment work on group claims.**—Every person owning a group of claims and doing the development or assessment work for the group at one point shall post a notice upon each claim at the discovery monument stating where such work is being done, and also post a notice at the entrance of the workings where such work is done, stating the names of the claims for which the work is done.

**History:** R. S. 1898, § 1499; L. 1899, ch. 14, § 5; C. L. 1907, § 1499; C. L. 1917, § 3894; R. S. 1933 & C. 1943, 55-1-5.

**1. Notice by affidavit.**

It is not necessary that the work be performed openly and notoriously in order to give notice to subsequent claimants that it is being done. Notice that the work

is being done in accordance with the assessment statute is given in the filing of the affidavit in the office of the county recorder and posting. *Chamberlain v. Montgomery*, 1 U. (2d) 31, 261 P. 2d 942.

**Collateral References.**

Mines and Minerals—23(1).  
58 C.J.S. Mines and Minerals § 67.

**40-1.6. Affidavit of work done.**—The owner of any quartz lode or placer mining claim who shall do or make, or cause to be done or made, the annual labor or improvements required by the laws of the United States, in order to prevent a forfeiture of the claim must, within thirty days after the completion of such work or improvements, file in the office of the county recorder of the county in which such claim is located his affidavit, or affidavits of the persons who performed or directed such labor or made or directed such improvements, showing:

- (1) The name of the claim and where situated.
- (2) The number of days' work done and the character and value of the improvements placed thereon.
- (3) The date or dates of performing such labor and making such improvements, and number of cubic feet of earth or rock removed.
- (4) At whose instance or request such work was done or improvements made.
- (5) The actual amount paid for such labor and improvements, and by whom paid.
- (6) That the notices were posted as required by section 40-1-5.

Such affidavits, or duly certified copies thereof, shall be prima facie evidence of the facts therein stated.

**History:** R. S. 1898, § 1500; L. 1899, ch. 14, § 6; C. L. 1907, § 1500; C. L. 1917, § 3895; R. S. 1933 & C. 1943, 55-1-6.

#### 1. Proof of assessment work.

The filing of the affidavit required by this section supports a finding that the work on a claim has been done in accordance with the requirements of 30 U. S. C. § 28 of the Mining Laws of the United States. *Chamberlain v. Montgomery*, 1 U. (2d) 31, 261 P. 2d 942.

#### 2. Assessment work.

Forfeitures are not favored and failure to do required assessment work does not, ipso facto, work a forfeiture but may render claims subject to loss if there is valid relocation before resumption of work. *Knight v. Flat Top Min. Co.*, 6 U. (2d) 51, 305 P. 2d 503.

#### Collateral References.

Mines and Minerals  $\Rightarrow$  23(4).  
58 C.J.S. Mines and Minerals § 75.

**40-1-7. District recorders—Office abolished.**—From and after the termination of the office of any mining district recorder now holding office in this state such district shall be abolished and such office shall become vacant.

**History:** Code Report; R. S. 1933 & C. 1943, 55-1-7.

#### Cross-Reference.

Recording conveyances generally, 57-3-1 et seq.

#### Collateral References.

Mines and Minerals  $\Rightarrow$  22.  
58 C.J.S. Mines and Minerals § 56.

**40-1-8. Vacancy and removal—County recorder to receive records.**—Whenever there is a vacancy in the office of recorder of any mining district, or the person holding such office shall remove from the district leaving therein no qualified successor in office, or whenever from any cause there is no person in such district authorized to retain the custody and give certified copies of the records, it shall be the duty of the person having custody of the records to deposit the same in the office of the county recorder of the county in which such mining district, or the greater part thereof, is situated, and the county recorder shall take possession of such records, and is hereby authorized to make and certify copies therefrom, including any other copies of records and papers in his office pertaining to mining claims, and such certified copies shall be receivable in evidence in all courts and before all officers and tribunals. The production of a certified copy so made shall be, without further proof, evidence that such records were properly in the custody of the county recorder.

History: R. S. 1898, § 1502; L. 1899, ch. 14, § 15; C. L. 1907, § 1506x2; C. L. 1917, § 3904; R. S. 1933 & C. 1943, 55-1-8.

**Cross-Reference.**

County recorder, powers and duties, 17-21-1 et seq.

**40-1-9. County recorder may certify district records.**—Where books, records and documents pertaining to the office of mining district recorder have been deposited in the office of any county recorder he is authorized to make and certify copies therefrom, and such certified copies shall be receivable in all tribunals and before all officers of this state in the same manner and to the same effect as if such records had been originally filed or made in the office of the county recorder.

History: L. 1899, ch. 14, § 11; C. L. 1907, § 1505; C. L. 1917, § 3900; R. S. 1933 & C. 1943, 55-1-9.

**40-1-10. Certified copies of records evidence.**—Copies of notices of location of mining claims, mill sites and tunnel sites heretofore recorded in the records of the several mining districts, and copies of the mining rules and regulations in force therein and recorded, when duly certified by the district or county recorder, shall be receivable in all tribunals and before all officers of this state as prima facie evidence.

History: L. 1899, ch. 14, § 9; C. L. 1907, § 1504; C. L. 1917, § 3899; R. S. 1933 & C. 1943, 55-1-10.

torial legislature. Comp. Laws 1876, p. 399, § 1222.

**Cross-References.**

Evidence generally, 78-25-1 et seq.

Public and private writings, admissibility, 78-26-1 et seq.

**Compiler's Notes.**

This section was derived from, and is substantially the same as, section 1 of Act of February 18, 1876, adopted by terri-

**40-1-11. Interfering with notices, stakes or monuments—Penalty.**—Any person who willfully or maliciously tears down or defaces a notice posted on a mining claim, or takes up or destroys any stake or monument marking any such claim, or interferes with any person lawfully in possession of such claim, or who alters, erases, defaces or destroys any record kept by a mining district or county recorder, is guilty of a misdemeanor, and shall be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than ten days nor more than six months, or by both such fine and imprisonment.

History: R. S. 1898 & C. L. 1907, § 1535; C. L. 1917, § 3937; R. S. 1933 & C. 1943, 55-1-11.

**Compiler's Notes.**

Except for minor grammatical changes, this section is identical with Comp. Laws 1876, § 1219; 2 Comp. Laws 1888, § 1291.

**Cross-References.**

Altering certificate of sampling or assaying an offense, 76-20-14.

Trespass and malicious injuries generally, 76-60-1 et seq.

**Collateral References.**

Mines and Minerals 19(1).

58 C.J.S. Mines and Minerals § 45.

**40-1-12. Trespassing on claims—Removing ores—Penalty.**—When damages are claimed for the extraction or selling of ore from any mine or mining claim and the defendant, or those under whom he claims, holds, under color of title adverse to the claims of the plaintiff, in good faith,

then the reasonable value of all labor bestowed or expenses incurred in necessary developing, mining, transporting, concentrating, selling or preparing said ore, or its mineral content, for market, must be allowed as an offset against such damages; provided, however, that any person who, wrongfully entering upon any mine or mining claim and carrying away ores therefrom, or wrongfully extracting and selling ores from any mine, having knowledge of the existence of adverse claimants in any mine or mining claim, and without notice to them, knowingly and willfully trespasses in or upon such mine or mining claim and extracts or sells ore therefrom shall be liable to the owners of such ore for three times the value thereof without any deductions either for labor bestowed or expenses incurred in removing, transporting, selling or preparing said ore, or its mineral content for market.

**History:** R. S. 1898 & C. L. 1907, § 1536; C. L. 1917, § 3938; R. S. 1933, 55-1-12; L. 1937, ch. 63, § 1; C. 1943, 55-1-12.

#### Compiler's Notes.

Prior to the 1937 amendment, this section read, "Any person, wrongfully entering upon any mine or mining claim and carrying away ores therefrom, or wrongfully extracting and selling ores from any mine, shall be liable to the owners of such ore for three times the value thereof."

#### 1. Mineral content of water.

Where owner of land conveyed it to defendant's predecessor in title reserving minerals on or in land conveyed, and subsequently conveyed mineral rights to plaintiff, held, in action by plaintiff to quiet title to water containing copper, that such water was not mineral, and hence, defendant was entitled to remove copper from water. *Stephens Hays Estate, Inc. v. Togliatti*, 85 U. 137, 38 P. 2d 1066.

#### 2. Condemnation of adjoining land.

Copper mining company which had easement to dump residue on certain part of adjoining claim and remove same at any time was entitled to condemn adjoining property for excavation of tunnel and erection of pipeline to divert waters from dump containing commercially valuable deposits of copper as a result of seepage through residue in dump, but was not en-

titled to pursue waters percolating through others' grounds after leaving dump, under statute similar to present 78-34-1, subd. 5; and where adjoining mining company had been precipitating copper from waters after percolating through dump, copper company was entitled to immediate possession under statute similar to present 78-34-9, pending final determination of condemnation proceeding. *Utah Copper Co. v. Montana-Bingham Consol. Min. Co.*, 69 U. 423, 255 P. 672.

#### 3. Application of statute.

Purpose of statute is to impose penalty upon and discourage the knowing and willful trespass upon mining claims and the wrongful extracting of ore therefrom; statute was inapplicable to party in lawful occupation of mine under valid lease where there was a bona fide dispute as to right of possession. *Even Odds, Inc.*, 22 U. 2d 49, 448 P. 2d 709.

#### Collateral References.

Trespass—60.

87 C.J.S. Trespass §§ 134 to 137.

Right of trespasser to credit for expenditures in producing, as against his liability for value of, oil or minerals, 21 A. L. R. 2d 380.

Severance of title or rights to oil and gas in place from title to surface, 146 A. L. R. 880.

**40-1-13. Prospecting permits—Term—Conditions.**—To further the development of the mineral resources of the state, the state land board is hereby authorized to issue prospecting permits to citizens of the United States upon any lands in which the state owns the mineral rights, and to grant to the permittee the exclusive right to prospect for minerals upon said lands, together with the exclusive right at any time during the life of the permit to have a mineral lease issued to him upon said lands in accordance with the laws of this state relating to mineral leases. No permit



shall be issued for a longer period than one year, but the board shall make yearly renewals as long as the permittee shall comply with the terms of the permit. No person or group of persons shall be entitled to a permit covering more than one hundred and sixty acres within any one township, and the said one hundred and sixty acres shall be described in square tracts of not less than ten acres each. The permittee shall cause not less than \$250 worth of development work to be performed upon the lands in each township every six months, and he shall not remove therefrom any ore until a mineral lease is issued to him by the land board. All permits shall be in writing and attested and signed by the executive secretary of the land board.

**History:** L. 1935, ch. 45, § 1; C. 1943, 55-1-13.

**Collateral References.**

Mines and Minerals § 6.

58 C.J.S. Mines and Minerals § 129.

Permits, 36 Am. Jur. 383, Mines and Minerals § 142.

**Title of Act.**

An act authorizing the state land board to issue prospecting permits and providing the terms and conditions thereof.

**Effective Date.**

Section 2 of Laws 1935, ch. 45, provided that act should take effect on approval. Approved March 26, 1935.

## CHAPTER 2

### COAL MINES

- |         |  |
|---------|--|
| Section | 40-2-1. Duties of industrial commission.   |
|         | 40-2-2. Right of visitation and inspection.  |
|         | 40-2-3. Mine owners to make maps of workings—Annual reports.   |
|         | 40-2-4. Provision for safe egress.   |
|         | 40-2-5. Ventilation.   |
|         | 40-2-6. Sprinkling system.   |
|         | 40-2-7. Timbering.   |
|         | 40-2-8. General rules for operators and employees.   |
|         | 40-2-9. Inspection and reports by industrial commission.   |
|         | 40-2-10. Notice to operators to make safe.   |
|         | 40-2-11. Oils and greases—Underground storage—Containers—Oiling or greasing of cars inside of mines.   |
|         | 40-2-12. Speaking tubes and signaling devices.   |
|         | 40-2-13. Explosions and accidents.   |
|         | 40-2-14. Mine foreman, fireboss and shotfirer—Applicants for—Examining board—Composition of—Certificates of competency—Term of office of examiners—Compensation and expenses of examining board.                               |
|         | 40-2-15. Certificate—Fee—Qualifications.   |
|         | 40-2-16. Necessity of certificate—Temporary mine foreman certificate—Posting—Prohibition and effect as to employment of one not having certificate—Liability of operator for injury or death of miner—Actions—Time limitation. |
|         | 40-2-17. Violation of chapter—Penalty.   |

**40-2-1. Duties of industrial commission.**—For the purpose of securing an efficient and thorough inspection of all coal and hydrocarbon mines within the state, coal mine inspection and all matters relating thereto shall be under the control of the industrial commission.

**History:** C. L. 1917, § 3076 [9]; L. 1921, ch. 67, § 1; R. S. 1933 & C. 1943, 55-2-1.

**Cross-References.**

Children, employment generally, 34-23-1 et seq.

Eight-hour day, 34-21-1 et seq.

Employment of women and children in mines, Const. Art. XVI, § 3, 34-22-1.

Health of miners, Const. Art. XVI, § 6.  
Improper designation of coal or mine as an offense, 76-4-6.

**Collateral References.**

Mines and Minerals 92.9.

58 C.J.S. Mines and Minerals § 240.

Generally, 36 Am. Jur. 281 et seq., Mines and Minerals § 1 et seq.

**40-2-2. Right of visitation and inspection.**—Every owner, agent, manager or lessee of any coal or hydrocarbon mine, whenever it is in active operation, shall freely admit any representative of the industrial commission to such mine, on the exhibition of his certificate of appointment, for the purpose of making the examinations and inspections provided for in this chapter, and shall render any necessary assistance for such inspection; but such representative shall not unnecessarily obstruct the working of the mine. Every owner, agent, manager or lessee of such mine refusing to so admit such representative is guilty of a misdemeanor, and shall be punished by a fine of not less than \$50 nor more than \$500 for every such offense.

**History:** C. L. 1907, § 1511; C. L. 1917, § 3914; R. S. 1933 & C. 1943, 55-2-2.

**40-2-3. Mine owners to make maps of workings—Annual reports.**—The owner, agent, manager or lessee of every coal or hydrocarbon mine shall make, or cause to be made, an accurate map or plan of the workings of such mine on a scale of 100 feet to the inch, which shall show all the openings or excavations, shafts, tunnels, slopes, planes, entries, cross headings and rooms therein, and the direction of the air currents and the water system therein, and shall accurately show the boundary lines between the mine and adjoining mines. Such map or plan, or a true copy thereof, shall be furnished to the industrial commission, and one copy shall be kept at such mine for the inspection of the industrial commission or its representatives. The owner, agent, manager or lessee, at least once in every six months, shall cause to be placed on the map or plan an accurate showing of all additional excavations which have been made in the mine. The several maps of plans of mines which are furnished to the industrial commission shall remain in its care and shall remain the property of the state, but in no case shall any copy of any of them be made without the consent of the owner, agent, manager or lessee. If the industrial commission shall find or have good reason to believe that any map or plan of any mine made or furnished in pursuance of the provisions of this section is materially inaccurate or imperfect, it is authorized to cause a correct plan or map of such mine to be made at the expense of the owner, agent, manager or lessee thereof; provided, that if the map or plan which was claimed to have been inaccurate shall be found to be practically correct, the state shall pay the expense of making such new map or plan. All persons operating coal or hydrocarbon mines shall, on or before the fifteenth day of December of each year, furnish the industrial commission a statement of the output of each mine, distri-

bution of such product, pounds of powder used, number and nationality of men employed, days worked, number of fatal and nonfatal accidents, from the first day of December of the preceding year to November 30, of the current year. Each owner, agent or lessee shall within thirty days after opening a new mine notify the industrial commission, giving name and address of the person, company or corporation so opening such mine, together with its location and the character of such mine and opening.

History: R. S. 1898, § 1515; C. L. 1907, § 1512; L. 1911, ch. 132, § 1; C. L. 1917, § 3915; R. S. 1933 & C. 1943, 55-2-3.

**40-2-4. Provision for safe egress.**—It shall be unlawful for the owner-operator or superintendent of any such mine to employ any person to work therein unless there are in connection with every seam or stratum of coal worked therein not less than two openings or outlets, separated by a stratum of not less than 150 feet at surface and not less than 30 feet at any place, at which safe and distinct means of ingress and egress shall at all times be available to the persons so employed. The escapements, shafts or slopes shall be fitted with safe and available appliances by which the employees of the mine may readily escape in case an accident occurs deranging the hoisting machinery at the outlets. In slopes used as haulage roads, where the dip or incline is ten degrees or more, there must be provided a separate traveling way, which shall be maintained in a safe condition for travel and kept free from dangerous gases. No inflammable structure, other than a frame to sustain pulleys or sheaves, shall be erected over the entrance to any mine; and no inflammable structure for the purpose of storing coal shall be erected within 200 feet of any such opening; but this chapter shall not be construed to prohibit the erection of a fan and its approaches for the purpose of ventilation, or of a trestle for the transportation of cars from any slope or other opening. All entrances to any place, not in the actual course of working, where explosive gas is known to exist shall be properly fenced across the whole width so as to prevent all persons from entering the same. Handrails and sufficient safety catches shall be attached to, and a sufficient cover overhead shall be provided on, every cage used for lowering or hoisting persons in any shaft. The ropes, safety catches, links and chains shall be carefully examined every day that they are used, by a competent person employed for that purpose by the mine owner, agent, manager or lessee, and any defect therein found shall be immediately remedied.

History: R. S. 1898, §§ 1515, 1517, 1521; Cross-Reference.  
C. L. 1907, § 1513; C. L. 1917, § 3916; R. Safety cages, 40-5-3.  
S. 1933 & C. 1943, 55-2-4.

**40-2-5. Ventilation.**—Every owner, agent, manager or lessee of a coal or hydrocarbon mine shall provide and maintain a constant and adequate supply of pure air and to that end the following provisions shall apply:

(1) It shall be unlawful to use a furnace for the purpose of ventilating any mine.

(2) The ventilation current shall be conducted and circulated to the face of each working place through the entire mine in sufficient quantities to dilute, render harmless and sweep away smoke and noxious or dangerous gases, and to such an extent that all working places and traveling roads shall be in a safe condition for working and traveling therein.

(3) All worked-out or abandoned parts of any mine in operation so far as practicable shall be kept free from dangerous bodies of gases or water; and if found impracticable to keep the entire mine free from dangerous accumulation of standing gases or water, the industrial commission shall be immediately notified.

(4) Every mine wherein are employed more than seventy-five persons must be divided into two or more districts. Each district shall be provided with a separate split of pure air, and the ventilation shall be so arranged that not more than seventy-five persons shall be employed at the same time in any one current or split of air.

(5) All crosscuts, when it becomes necessary to close them permanently, shall be substantially closed whenever practicable with brick or other suitable material laid in mortar or with cement, but in no case shall such crosscut stopping be constructed of plank, except for temporary purposes.

(6) All doors used in assisting or in any way affecting the ventilation shall be so hung and adjusted that they will close automatically; main doors regulating the principal air currents of the mine shall be so placed, in all cases where it is practicable, that when one door is open another, which has the same effect upon the same current of air, will be and remain closed.

(7) All permanent air bridges shall be built when and as circumstances require and shall be built of fireproof material and be of such strength as the circumstances may require.

(8) The quantities of air in circulation shall be ascertained with an anemometer or other efficient instrument; such measurement to be made by the inside foreman or other competent person at least once every week and a report of air measurements to be forwarded to the industrial commission, together with a statement of the number of persons employed in each district, on or before the twelfth day of each month for the preceding month.

(9) For the purpose of properly ventilating rooms and entries in a coal mine crosscuts in rooms shall be not more than 100 nor less than 50 feet apart, and crosscuts in the main entrance shall not, except in cases of urgent necessity according to the opinion of the industrial commission, be less than 75 feet nor more than 200 feet apart.

**History:** R. S. 1898, § 1518; C. L. 1907, § 1515; L. 1911, ch. 132, § 1; C. L. 1917, § 3918; R. S. 1933 & C. 1943, 55-2-5; L. 1945, ch. 83, § 1; 1949, ch. 64, § 1.

**Compiler's Notes.**

The 1945 amendment increased the minimum quantity of air in former subd. (2) from 100 cubic feet per minute to 150 cubic feet per minute.

The 1949 amendment deleted "wherein explosive gases are generated" following "mine" in subd. (1); deleted former subd. (2) in regard to minimum quantity of air; redesignated former subds. (3) through (10) as subds. (2) through (9); and inserted, in subd. (7), "when and as circumstances require and shall be built of fireproof material" after "shall be built."

**40-2-6. Sprinkling system.**—Every owner, agent, manager or lessee of a coal or hydrocarbon mine shall provide and maintain a water system for the purpose of conducting water to the face of each working place and throughout the entire open part of the mine in sufficient quantities for sprinkling purposes to wet down dust arising and accumulating in and around the mine. It shall be the duty of the superintendent, mine foreman and the industrial commission to see that this is done; provided, that in mines or parts of mines where by reason of naturally wet conditions or moisture derived from the introduction of steam into the air currents, or both, such sprinkling may not be necessary it shall not be required.

**History:** C. L. 1907, § 1516; C. L. 1917, § 3919; R. S. 1933 & C. 1943, 52-2-6.

**40-2-7. Timbering.**—It shall be the duty of every owner, operator, superintendent and mine foreman to furnish to the miners all props, ties, rails and timbers necessary for safe mining in coal and hydrocarbon mines, and for the protection of the lives of the workmen. Such props, ties, rails and timbers shall be suitably prepared and shall be delivered within 100 feet of the face of the room or entry and other working places, free of charge. Whenever underhand stoping is used to extract hydrocarbon ore, an efficient system of timbering, approved by the industrial commission, shall be enforced.

**History:** R. S. 1898, § 1519; C. L. 1907, § 1517; L. 1911, ch. 132, § 1; C. L. 1917, § 3920; R. S. 1933 & C. 1943, 55-2-7.

**Collateral References.**

Duty of an employer with respect to the timbering of a mine, 15 A. L. R. 1380, 1430.

**40-2-8. General rules for operators and employees.**—The following general rules shall be observed by every owner, operator, superintendent, mine foreman and employee of a coal or hydrocarbon mine:

(1) Every owner and operator shall use every reasonable precaution to ensure the safety of the workmen in all cases, and when employing more than five men underground shall place the underground workings thereof under the charge and daily supervision of a person who shall be known as "mine foreman," and who must hold a mine foreman's certificate.

In coal mines not employing more than five men on any one shift in a twenty-four hour period, the operator or owner must designate a man known as a mine foreman to supervise the operation of that mine while men are on shift. Such authorized foreman must have had at least five years' underground experience in coal mines and before being placed in charge must undergo an oral examination given by a coal mine inspector to determine his competence. If he successfully passes said examination to the satisfaction of the mine inspector he will then be issued an oral examination certificate which shall only apply to that particular mine.

In mines classified as "gassy" by the industrial commission regardless of the number of men employed therein on any one shift, the owner-operator must employ a certified mine foreman to supervise the underground operations while men are on shift and said foreman must have

successfully passed the examination given by the coal mine examining board and have been issued a certificate by the industrial commission.

Should an oral examination certificate be issued to a mine foreman in a nongassy mine and the status or classification of the mine changes from "nongassy" to "gassy" the oral examination certificate is automatically revoked and none other than a regular certified mine foreman shall be employed.

Where not more than five men are employed on any one shift and a mine foreman is certified orally, this does not exempt the owner or certified man from any provisions of the general coal mine safety orders but they are subject to all of them as is the case in any coal or hydrocarbon mine operating in the state of Utah.

(2) All accessible parts of abandoned portion of a mine in which explosive gases have been found or are known to exist shall be carefully examined by the mine foreman or his assistants at least once in each week, and danger existing therein from such gases shall be removed as soon as possible. A report of each examination shall be recorded in a book kept for that purpose, signed by the person making the examination.

(3) In any mine the mine foreman or fire bosses shall make a careful examination every morning of all working places and traveling ways and all other places which might endanger the safety of the workmen, within three hours prior to the time at which the workmen enter the mine. Such examination shall be made with the safety lamp. No person, except those whose presence is necessary to prepare the mine for the entrance of the workmen, shall enter the mine, or any part thereof, until the mine foreman or fire boss of his district shall report to him that his place is in a safe condition. The mine foreman or fire boss making such examination shall record the result of his examination in a book kept for that purpose, which shall be open to the inspection of the representatives of the industrial commission and all employees.

(4) In any working place where there is likely to be an accumulation of explosive gases no light or fire other than locked flame safety lamps or approved permissible electric storage battery lamps shall be allowed or used. Whenever such lamps are required in any mine, they shall be the property of the owner or operator, and a competent person shall be appointed for the purpose of examining every such lamp, which examination shall be made immediately before it is taken into the mine for use. He shall clean, lock and otherwise ascertain if it is safe for use. In all hydrocarbon mines only approved permissible electric storage battery lamps shall be used for lighting purposes; the style of such lamps to be approved by the industrial commission. Every such owner, agent, lessee or operator of coal or hydrocarbon mines, when working the same in close proximity to an abandoned mine or part of a mine containing water or fire damp, shall cause bore holes to be kept at least twenty-five feet in advance of the working face and the sides of all working places in such mines known to be approaching old or abandoned mines, or other mines containing water or fire damp. Such holes shall not be more than

twenty-five feet apart, and shall be twenty-five feet in depth and at angle of at least twenty-five degrees from the center hold.

(5) Every miner or other person having charge of a working place in any mine shall keep the roof and sides thereof properly secured by timbering or otherwise so as to prevent such roof and sides from falling and injuring him or his fellow workmen; and he shall not do any work or permit any work to be done under loose rock or dangerous material except for the purpose of securing the same.

(6) No more than ten persons shall be hoisted or lowered at any one time in any shaft or slope. This, however, shall not prohibit the hoisting or lowering of ten or more persons at any one time on slopes where five or more loaded cars are regularly hoisted.

(7) No person in a state of intoxication shall be allowed to go into or loiter about the mine. It shall be a misdemeanor for any person under the influence of intoxicating liquor to enter any mine or any building connected therewith where miners or other workmen are employed or to loiter about any mine or to carry intoxicating liquor into any mine.

(8) Any miner or other workman who shall discover anything wrong with the ventilating current, or with the condition of the roof, sides, timbers or roadway, or with any other part of the mine in general, such as would lead him to suspect danger to himself or his fellow workmen, the property of his employer shall as soon as possible report the same to the mine foreman or other person in charge of that portion of the mine.

(9) Any person who knowingly or willfully damages or, without proper authority, removes or renders useless any fencing, means of signaling, apparatus, instrument or machine, or who throws open or obstructs any airway, or opens any ventilating door and does not leave the same closed, or enters a place in or about a mine against caution, or carries fire, open lights or matches in places where safety lamps are used, handles, without proper authority, or disturbs any machinery or cars, or does any other act or thing whereby the lives or health of persons or the security of property in or about the mine is endangered, is guilty of a misdemeanor.

(10) Not more than one day's supply of explosives shall be stored in a mine, provided, however, where a mine uses less than 300 pounds of explosives in any one day, an amount of explosives not in excess of 300 pounds may be stored in such mine, and a workman shall not have at any time in any place more than six and one-quarter pounds of powder, provided, that under special conditions a larger amount may be allowed in a mine for immediate use when approval of such action is made in writing by the industrial commission.

(11) Every person who has explosives in a mine shall keep it in a box made of nonconducting material securely locked, and such box shall be kept at least twenty-five feet from the tracks or trolley wires in a place where room at such distance is available.

(12) In charging holes for blasting in coal, slate or rock only wood tamping rods shall be used.

(13) The charge of powder or any other explosive in coal, slate or rock which has missed fire shall not be withdrawn or the hole reopened, except where such holes are tamped with wet wood pulp, and it shall be unlawful for the purpose of blasting coal to tamp shot holes with drillings, coal dust or small pieces of coal, but it shall be the duty of every superintendent, foreman or lessee to furnish clay or earth tamping, except when wood pulp is used.

(14) Before commencing work, and also after the firing of every blast, the miner working a room, or other place in the mine, shall enter such room or place to examine and ascertain its conditions, and his assistant shall not go to the face of such room or place until the miner has examined the same and found it to be safe.

(15) When more than five men are employed, no person shall be employed to blast coal or rock unless such person is certified.

In nongassy mines employing not more than five men, no person shall be employed to blast coal or rock unless such person has undergone and successfully passed an oral examination given by a state coal mine inspector, and an oral certificate issued to him authorizing him to do such blasting.

(16) Every passageway equipped with mechanical haulage and used by persons as a regular traveling way and at the same time for transportation of coal or other material shall be of sufficient width to permit persons to pass moving cars with safety. If found impracticable to make any passageway of sufficient width, then holes of ample dimensions, and not more than 150 feet apart, shall be made on one side of the passageway. Passageways and safety holes shall be kept free from obstruction, and the roof and sides of the same shall be made secure. Safety holes shall be made at the bottom of all slopes and planes when necessary, and kept free from obstruction to enable the footmen to escape readily in case of danger.

(17) It shall be unlawful for any owner, operator, superintendent or mine foreman of any mine which generates explosive gases to employ any person who is not competent to understand the regulations of any mine evolving explosive gases.

(18) No person shall be permitted to enter any dry gilsonite or elaterite mine with any kind of light other than an electric or other safety lamp.

(19) For the purpose of making known the provisions of this section to all persons employed in and around mines the owner and operator of every coal and hydrocarbon mine shall post in a conspicuous place at or near the entrance of the mine, where they may be conveniently read by all persons employed therein, these rules, and keep the same posted at all times.

(20) Whenever the industrial commission discovers in any mine in which blasting of coal is allowed during working hours that the air is becoming vitiated by unnecessary blasting of coal it may regulate the same, and designate at what hour of the day blasting may be permitted;



provided, that where coal is shot off the solid without undermining : least two periods for shooting shall be allowed during each working day.

(21) It shall be unlawful for any owner, operator, superintendent mine foreman or any employee of any mine which generates explosive gases to remove any accumulated body of gases by wafting or brushing. All such bodies of gases must be removed from the mine by approved methods of ventilation.

**History:** C. L. 1907, § 1518; L. 1911, ch. 132, § 1; 1913, ch. 78, § 1; C. L. 1917, § 3921; R. S. 1933 & C. 1943, 55-2-8; L. 1949, ch. 64, § 1.

#### Compiler's Notes.

The 1949 amendment inserted "and when employing more than five men underground" after "in all cases" in subd. (1), and added last four paragraphs to that subdivision; deleted "known to generate explosive gases" after "In any mine" in subd. (3); inserted "or approved permissible electric storage battery lamps" after "locked flame safety lamps" near the beginning of subd. (4) and deleted provision relative to lamps of fire bosses and lamps to be used in hydrocarbon mines; added the penalty clause in subd. (7); rewrote the first part of subd. (10); rewrote subd. (11); rewrote provision relative to tampering bars in subd. (12); and rewrote subd. (15).

#### Cross-References.

Examination and appointment of mine foremen, 40-2-14.

Safety cages, 40-5-3.

Storage of explosives, 40-5-4.

#### Storage of explosives.

Violation of provisions relating to storage of explosives in mine renders mine owner-operator liable for injuries proximately caused to an invitee by such violation. *Skerl v. Willow Creek Coal Co.*, 92 U. 474, 69 P. 2d 502.

#### Collateral References.

Liability for property damage by concussion from blasting, 20 A. L. R. 2d 1372.

Liability of mine operator for damage to surface structure by removal of lateral support, 32 A. L. R. 2d 1329.

Right of mineral lessee to deposit top soil, waste materials, and the like upon lessor's additional land not being mined, 26 A. L. R. 2d 1453.

### DECISIONS UNDER FORMER LAW

#### Explosive gases.

Former subdivision requiring that all mines known to generate explosive gases be inspected every morning applied to a mine in which explosive gases were dis-

covered on one occasion, whether or not they existed in the mine in sufficient quantity to make it unsafe or dangerous in the opinion of experts. *Eleganti v. Standard Coal Co.*, 50 U. 535, 163 P. 266.

**40-2-9. Inspection and reports by industrial commission.**—It shall be the duty of the industrial commission to make a careful and thorough inspection of each coal and hydrocarbon mine operated within the state at least once every three months, and oftener if the condition of the mine requires its attention. It shall make an annual report to the governor, showing the condition of each coal and hydrocarbon mine in the state. It shall examine into the conditions affecting the safety of workmen, mine workings, machinery, ventilation and drainage, and into the method of lighting and using lights, and all other matters connected with the working safety of persons in such mines, and give directions providing for the better health and safety of persons employed in or about the same. Every owner or operator is hereby required to freely permit such entry, inspection, examination, inquiry and exit, and to furnish a guide when necessary. The industrial commission shall make a record of its visits, noting the time of the inspection and the material circumstances of the same, and shall also

notify the owner or operator of the mine by a written report of the condition of the mine at the time of such inspection.

**History:** R. S. 1898, §§ 1510, 1512, 1513;  
C. L. 1907, § 1519; C. L. 1917, § 3922 [1];  
R. S. 1933 & C. 1943, 55-2-9.

**40-2-10. Notice to operators to make safe.**—If the industrial commission finds that a mine is not properly worked, or is not furnished with proper machinery or appliances for the safety of the miners and all other employees, it shall give written notice to the owner or manager thereof that it is unsafe, specifying in what particulars it is unsafe, and shall direct the owner or manager thereof to make such improvements as are necessary within a reasonable period. If the improvements are not made as required in the notice, it shall be unlawful for the owner or manager to operate such mine until such improvements are completed.

**History:** R. S. 1898, §§ 1510, 1512, 1513;  
C. L. 1907, § 1519; C. L. 1917, § 3922 [2];  
R. S. 1933 & C. 1943, 55-2-10.

**40-2-11. Oils and greases—Underground storage—Containers—Oiling or greasing of cars inside of mines.**—Underground storage for lubricating oils and greases in excess of two days' supply shall be of fireproof construction. Lubricating oils and greases used in face regions or other working places shall be in portable closed metal containers. The oiling or greasing of cars inside of the mines is forbidden unless the place where the oil or grease is used is thoroughly cleaned at least once every day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point.

**History:** R. S. 1898, §§ 1510, 1512, 1513;  
C. L. 1907, § 1519; C. L. 1917, § 3922 [3];  
R. S. 1933 & C. 1943, 55-2-11; L. 1949,  
ch. 64, § 1.

**Compiler's Notes.**

Prior to the 1949 amendment this section read: "No explosive oil shall be used in or taken into coal or hydrocarbon mines for lighting purposes, except when used in approved safety lamps, or, when used by day men, diluted with a nonexplosive animal or vegetable oil. Oil for such purpose shall not be stored or taken into the mines in quantities exceeding five gallons, or otherwise than in tight cans approved by the industrial commission. The oiling or greasing of cars inside of the mines is

forbidden unless the place where the oil or grease is used is thoroughly cleaned at least once every day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point; and not more than one barrel of lubricating oil shall be permitted in a mine at any one time. Only a pure animal oil shall be permitted in a mine at any one time. Only a pure animal oil or pure cottonseed oil, or oils that are as free from smoke as pure animal oil or pure cottonseed oil, shall be used for illuminating purposes in any coal or hydrocarbon mine, except as above provided. No person shall use explosive or impure oil contrary to this section."

**40-2-12. Speaking tubes and signaling devices.**—In shaft or slope mines where persons are lowered or hoisted by machinery a metal speaking tube or other suitable appliance shall be provided in all cases so that conversation or signaling may be carried on through the same from the top to the bottom of the shaft or slope.

**History:** C. L. 1907, § 1520; C. L. 1917,  
§ 3923; R. S. 1933 & C. 1943, 55-2-12.

**40-2-13. Explosions and accidents.**—Whenever by reason of an explosion or any other accident in any coal or hydrocarbon mine, or the machinery connected therewith, loss of life or serious personal injury occurs it shall be the duty of the person having charge of such mine or colliery to give notice thereof promptly to the industrial commission, and, if any person is killed thereby, to the proper justice of the peace of the county, who shall give due notice of an inquest to be held. If such justice of the peace shall determine to hold an inquest, the commission may offer such evidence as it shall deem necessary to thoroughly inform the inquest of the causes of death, and the commission may appear before such inquest and question or cross-question any witness, and there shall be at least two men experienced in coal mines on the jury. The commission, when possible, upon being notified as herein provided shall immediately go to the scene of the accident and give such directions as may appear necessary to secure the future safety of the men, and shall proceed to investigate and ascertain the causes of the explosion or accident, and make a record thereof which it shall file. The cost of such investigation shall be paid by the county in which the accident occurred.

**History:** R. S. 1898, § 1523; C. L. 1907, § 1521; C. L. 1917, § 3924; R. S. 1933 & C. 1943, 55-2-13.

**Cross-Reference.**

Investigation of deaths, 26-20-1 et seq.

**Collateral References.**

Shaft: liability of landowner for injury or death of adult falling down unholed mine shaft or the like, 46 A. L. R. 2d 1069.

Strip or other surface mine or quarry operator, liability to person, other than employee, injured or killed during mining operations, 84 A. L. R. 2d 733.

**40-2-14. Mine foreman, fireboss and shotfirer—Applicants for—Examining board—Composition of—Certificates of competency—Term of office of examiners—Compensation and expenses of examining board.**—The industrial commission shall appoint an examining board consisting of six members, two of whom shall be members or employees of the commission, two of whom shall be officials of coal mine operators, and two of whom shall be coal miners, (the latter four must be citizens of the United States and have had at least five years' experience in coal mining in this state). It shall be the duty of the examining board to examine applicants as to their competency and qualifications to discharge the duties of mine foreman, firebosses and shotfirer. Such board of examiners shall meet at the call of the commission and examine applicants for the positions of mine foreman, fireboss and shotfirer, respectively. The commission shall grant certificates to persons whose examinations disclose their fitness for the duties of mine foreman, fireboss and shotfirer, respectively. A certificate shall be sufficient evidence of the competency and qualifications of the holder to perform the duties of the certified position. The members of the examining board, other than members of the commission or its employees shall receive \$10.00 per day, to be paid from the state treasury, for each day necessarily and actually employed, and actual and necessary traveling expenses while employed in their official duties. Sessions of the examining board shall not exceed three days in any quarter. The members of the examining board shall hold office at the pleasure of the commission.

History: R. S. 1898, § 1526; C. L. 1907, § 1522; C. L. 1917, § 3925; L. 1923, ch. 10, § 1; R. S. 1933 & C. 1943, 55-2-14; L. 1945, ch. 83, § 1.

#### Compiler's Notes.

The 1945 amendment increased the examining board to six members; inserted references to "shotfirer" in the second, third and fourth sentences; increased compensation for board from \$4 per day to \$10 per day, and made other minor changes.

**40-2-15. Certificate—Fee—Qualifications.**—For each certificate granted a fee of \$1.00 shall be collected, to be paid into the state treasury. No person shall be granted a certificate as mine foreman, or fireboss or shotfirer who is not a citizen of the United States, unless he shall produce satisfactory evidence of good moral character and has declared his intention to become a citizen under the naturalization laws. No person shall be granted a certificate as mine foreman who has had less than five years' coal mining experience, and no person shall be granted a certificate as fireboss or shotfirer who has had less than three years' coal mining experience; provided, however, that a graduate of an approved four year college course in mining engineering shall, by reason of such graduation, be given credit for two years' experience toward the required five years of coal mining experience and for one and one-half years' experience toward the required three years of coal mining experience.

History: R. S. 1898, § 1526; C. L. 1907, § 1522; C. L. 1917, § 3925; L. 1923, ch. 10, § 1; R. S. 1933 & C. 1943, 55-2-15; L. 1945, ch. 83, § 1; 1949, ch. 64, § 1.

#### Compiler's Notes.

The 1945 amendment inserted "or shotfirer" after "or fireboss" in the second sentence and made minor changes in punctuation and phraseology.

The 1949 amendment added the last sentence.

**40-2-16. Necessity of certificate—Temporary mine foreman certificate—Posting—Prohibition and effect as to employment of one not having certificate—Liability of operator for injury or death of miner—Actions—Time limitation.**—Except as herein provided, no person shall act as mine foreman or as fireboss or as shotfirer unless granted a certificate of competency by the industrial commission, provided, however, that the industrial commission may issue, upon a showing of competency, a temporary mine foreman certificate to remain in effect, unless sooner revoked for cause, only until the time the next regular examination for certification is held. No owner, operator, contractor, lessee or agent shall employ any mine foreman or fireboss or shotfirer who does not have the certificate of competency required. Such certificate shall be posted in the office of the mine, and if any accident shall occur in any mine, in which a mine foreman or a fireboss or a shotfirer was employed who had no certificate of competency as required by this chapter, by which any miner shall be killed or injured, he or his heirs shall have a right of action against such operator, owner, lessee, or agent and shall recover the full damage sustained; such action to be brought within two years after the accident, and, in case of death, to be brought by his heirs, or personal representatives for the benefit of his heirs.

History: R. S. 1898, § 1526; C. L. 1907, § 1; R. S. 1933 & C. 1943, 55-2-16; L. 1945, § 1522; C. L. 1917, § 3925; L. 1923, ch. 10, ch. 83, § 1; 1949, ch. 64, § 1.

**Compiler's Notes.**

The 1945 amendment made only minor changes in phraseology.

The 1949 amendment inserted the sentence and made only minor changes in phraseology in the present second and third sentences.

**40-2-17. Violation of chapter—Penalty.**—The neglect or refusal to perform the duties required to be performed by any section of this chapter, or the violation of any of the provisions hereof is a misdemeanor, and any person so neglecting or refusing to perform such duties or violating any such provisions, shall be punished by a fine of not less than \$100 nor more than \$500 for each such offense.

**History:** R. S. 1898, § 1516; C. L. 1907, § 1524; C. L. 1917, § 3926; R. S. 1933 & C. 1943, 55-2-17.

## CHAPTER 3

## WEIGHING COAL AT MINES

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|-----------------|--|
| Section 40-3-1. | Operators to provide scales.   |
| 40-3-2.         | Weighmen—Oath—Record of coal mined by individual miners.                 |
| 40-3-3.         | Check-weighmen—Duties and powers.  |
| 40-3-4.         | Fraudulent weighing—Penalty.   |
| 40-3-5.         | Industrial commission to examine scales.                                 |
| 40-3-6.         | Shipments—Bill of lading to show weight of car before and after loading. |

**40-3-1. Operators to provide scales.**—The owner, agent or operator of every coal mine at which the miners are paid by weight shall provide for such mine suitable and accurate scales of standard manufacture for weighing of all coal which shall be hoisted or delivered from such mine. When coal is weighed in the miner's car such car shall be brought to standstill on the scales before the weight is taken.

**History:** R. S. 1898 & C. L. 1907, § 1529; C. L. 1917, § 3930; R. S. 1933 & C. 1943, 55-3-1.

**Collateral References.**

Master and Servant § 70.  
56 C.J.S. Master and Servant § 158.  
Public control and regulation, 36  
Jur. 385, Mines and Minerals § 150.

**40-3-2. Weighmen—Oath—Record of coal mined by individual miners.**—Such owner, agent or operator shall require the person authorized to weigh the coal to take and subscribe an oath to keep the scales correctly balanced, to accurately weigh and to correctly record the gross or screened weight, to the nearest ten pounds, of each miner's car of coal delivered, and such oath shall be kept conspicuously posted at the place of weighing. The record of the coal mined by each miner shall be kept separate, and shall be opened to his inspection at all reasonable hours, and also to the inspection of all other persons pecuniarily interested in the mine.

**History:** R. S. 1898 & C. L. 1907, § 1530; C. L. 1917, § 3931; R. S. 1933 & C. 1943, 55-3-2.